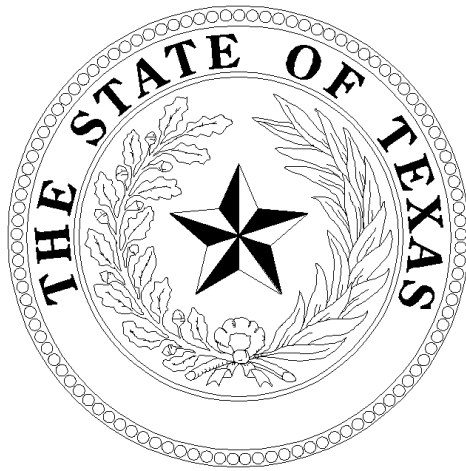


Texas Board of Occupational Therapy Examiners



Occupational Therapy Rules December, 2021

Adopted under the authority of Title 3, Subtitle H,
Chapters 452 and 454, Occupations Code

**Executive Council of
Physical Therapy and
Occupational Therapy Examiners**

Includes all revisions as of December 1, 2021.

Subject to further change by action of the
Texas Legislature,
Executive Council of Physical Therapy and Occupational Therapy Examiners, and
Texas Board of Occupational Therapy Examiners.

333 Guadalupe Street, Suite 2-510
Austin, Texas 78701-3942
(512) 305-6900 (phone)
(512) 305-6970 (fax)
(512) 305-6951 (fax)

www.ptot.texas.gov

Rule Amendments and Adoptions

Notice of rule changes is published in the *Texas Register* when they are proposed for public comment and again when adopted.

Board rule changes new to this edition:

- §364.5. Recognition of Out-of-State License of Military Spouse.

Table of Contents

TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS	1
CHAPTER 361 STATUTORY AUTHORITY	1
§361.1. Statutory Authority.	1
CHAPTER 362 DEFINITIONS	2
§362.1. Definitions.....	2
CHAPTER 363 CONSUMER/LICENSEE INFORMATION	8
§363.1. Consumer/Licensee Information.	8
§363.2. Petition for the Adoption of a Rule.	8
§363.3. Negotiated Rulemaking.....	9
§363.4. Alternative Dispute Resolution.....	9
CHAPTER 364 REQUIREMENTS FOR LICENSURE	10
§364.1. Requirements for Licensure.....	10
§364.2. Initial License by Examination.....	12
§364.3. Temporary License.	12
§364.4. Licensure by Endorsement.	13
§364.5. Recognition of Out-of-State License of Military Spouse.	14
CHAPTER 367 CONTINUING EDUCATION.....	16
§367.1. Continuing Education.....	16
§367.2. Categories of Education.....	17
§367.3. Continuing Education Audit.....	21
§367.4. Process for Selecting a Peer Organization to Evaluate and Approve Continuing Education Courses.	22
CHAPTER 368 OPEN RECORDS	23
§368.1. Open Records.	23
CHAPTER 369 DISPLAY OF LICENSES.....	24
§369.1. Display of Licenses.....	24
§369.2. Changes of Name or Address.....	24
§369.3. Use of Titles.....	25
CHAPTER 370 LICENSE RENEWAL	26
§370.1. License Renewal.	26
§370.2. Late Renewal.....	27
§370.3. Restoration of a Texas License.....	27
CHAPTER 371 INACTIVE AND RETIRED STATUS.....	32
§371.1. Inactive Status.	32
§371.2. Retired Status.....	33

CHAPTER 372 PROVISION OF SERVICES	36
§372.1. Provision of Services.	36
§372.2. General Purpose Occupation-Based Instruction.	38
CHAPTER 373 SUPERVISION.....	40
§373.1. Supervision of Non-Licensed Personnel.	40
§373.2. Supervision of a Temporary Licensee.....	41
CHAPTER 374 DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS	44
§374.1. Disciplinary Actions.....	44
§374.2. Detrimental Practice.	51
§374.3. Complaint Process.....	53
§374.4. Code of Ethics.	58
§374.5. Licensure of Persons with Criminal Convictions.....	65
CHAPTER 375 FEES.....	68
§375.1. Fees.	68
EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS.....	69
CHAPTER 651 FEES.....	69
§651.1. Occupational Therapy Board Fees.	69
§651.3. Administrative Services Fees.....	70

TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**TITLE 40 SOCIAL SERVICES AND ASSISTANCE PART 12****CHAPTER 361 STATUTORY AUTHORITY****§361.1. Statutory Authority.**

These rules are promulgated under the authority of the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851. These rules do not restate all the provisions of the Occupational Therapy Practice Act. The board makes decisions in the discharge of its statutory authority without regard to any person's race, creed, color, religion, sex, national origin, disability, or age.

Source Note: The provisions of this §361.1 adopted to be effective October 11, 1994, 19 TexReg 7712.

CHAPTER 362 DEFINITIONS

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) Complete Application--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) Complete Renewal--Contains renewal fee, renewal form with continuing education submission form, home/work address(es) and phone number(s), jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

- (11) Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.
- (12) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.
- (13) Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.
- (14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.
- (15) Examination--The Examination as provided for in §454.207 of the Practice Act (relating to License Examination). The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).
- (16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.
- (17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.
- (18) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.
- (19) Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees.
- (20) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.
- (21) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book, online examination with multiple choice and/or true-false questions. The passing score is at least 70%.
- (22) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(23) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(24) NBCOT--National Board for Certification in Occupational Therapy.

(25) Non-Licensed Personnel--OT Aide or OT Orderly or other person not licensed by this Board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and supervision.

(26) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do not require the routine intervention of a physician.

(27) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(28) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32) Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(33) Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this Board.

(34) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(35) Place(s) of Business—Any facility in which a licensee practices.

(36) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this Board may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

(37) Rules--Refers to the TBOTE Rules.

(38) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(39) Telehealth--A mode of service delivery for the provision of occupational therapy services delivered by an occupational therapy practitioner to a client at a different physical location using telecommunications or information technology. Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

Source Note: The provisions of this §362.1 adopted to be effective October 11, 1994, 19 TexReg 7712; amended to be effective January 1, 1996, 20 TexReg 10906; amended to be effective May 8, 1996, 21 TexReg 3714; amended to be effective March 5, 1997, 22 TexReg 1897; amended to be effective November 4, 1997, 22 TexReg 10747; amended to be effective October 25, 1998, 23 TexReg 10911; amended to be effective August 21, 2000, 25 TexReg

8062; amended to be effective October 16, 2000, 25 TexReg 10377; amended to be effective February 12, 2001, 26 TexReg 1346; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective December 27, 2001, 26 TexReg 10623; amended to be effective July 22, 2002, 27 TexReg 6545; amended to be effective November 15, 2004, 29 TexReg 10581; amended to be effective May 31, 2007, 32 TexReg 2877; amended to be effective December 21, 2008, 33 TexReg 10189; amended to be effective June 18, 2009, 34 TexReg 3982; amended to be effective October 6, 2013, 38 TexReg 6928; amended to be effective July 1, 2016, 41 TexReg 4046; amended to be effective March 1, 2018, 43 TexReg 901; amended to be effective September 1, 2019, 44 TexReg 4325.

CHAPTER 363 CONSUMER/LICENSEE INFORMATION

§363.1. Consumer/Licensee Information.

- (a) The board prepares and provides without cost a Consumer Information Sign (in English and Spanish). The sign, or a reasonable facsimile of the sign, must be displayed in a location of public access at the place(s) of business of any board licensee.
- (b) Board meetings are announced and conducted under the provisions of the Texas Open Meetings Act, Texas Government Code, §551 et seq.
- (c) The board intends that the public have a reasonable opportunity to speak on issues that are under the jurisdiction of the board. The board reserves the authority to limit the length of public commentary.
- (d) The licensee is responsible for being knowledgeable of Title 3, Subtitle H, Chapter 454 Occupations Code, the Occupational Therapy Practice Act, and of the Texas Board of Occupational Therapy Examiners' rules.

Source Note: The provisions of this §363.1 adopted to be effective January 9, 1995, 19 TexReg 10360; amended to be effective July 22, 2002, 27 TexReg 6545.

§363.2. Petition for the Adoption of a Rule.

- (a) In accordance with Texas Government Code, §2001.021, an interested person may petition the Board for the adoption of a rule. In this section, "interested person" has the meaning as defined in Texas Government Code, §2001.021.
- (b) The petition must be submitted to the Board and must contain the name and contact information of the interested person and affiliation or organization if any; a description of the rule and the reason for it; the section numbers and titles from the Texas Board of Occupational Therapy Examiners Rules of the rule sections affected if applicable; and the proposed rule text with any added language underlined and any deleted language bracketed. The petition must include a statement of the statutory authority under which the rule is to be adopted and a statement regarding the public benefits anticipated as a result of adopting the rule or the anticipated injury or inequity that could result from the failure to adopt the proposed rule. The petition must be dated and signed by the interested person.
- (c) The Board shall evaluate the merits of the proposal.
- (d) In accordance with Texas Government Code, §2001.021, the Board shall respond to the petitioner within 60 days of receipt of the petition. The response shall:
 - (1) advise that rulemaking proceedings will be initiated; or
 - (2) deny the petition, stating the reasons for its denial.
- (e) If the Board initiates rulemaking procedures in response to a petition, the rule text that the Board proposes may differ from the rule text proposed by the petitioner.
- (f) Initial petitions for the adoption of a rule shall be presented to and decided by the Board in accordance with the provisions of this section. The Board may refuse to consider any

subsequent petition from the same interested person for the adoption of the same or a similar rule submitted within twelve months after the date of the Board's rejection of the initial petition.

Source Note: The provisions of this §363.2 adopted to be effective January 1, 2016, 40 TexReg 8664.

§363.3. Negotiated Rulemaking.

It is the policy of the Board to engage in negotiated rulemaking procedures consistent with Texas Government Code, Chapter 2008, when appropriate.

Source Note: The provisions of this §363.3 adopted to be effective March 1, 2018, 43 TexReg 901.

§363.4. Alternative Dispute Resolution.

It is the policy of the Board to use alternative dispute resolution where appropriate consistent with Texas Government Code, Chapter 2009, and any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

Source Note: The provisions of this §363.4 adopted to be effective March 1, 2018, 43 TexReg 901.

CHAPTER 364 REQUIREMENTS FOR LICENSURE

§364.1. Requirements for Licensure.

(a) All applicants for initial Texas licensure shall:

- (1) submit a complete application form and non-refundable application fee as set by the Executive Council;
- (2) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;
- (3) submit a successfully completed Board jurisprudence examination on the Act and Rules;
- (4) have completed academic and supervised field work requirements of an accredited educational program in occupational therapy as per §454.203 of the Act (relating to Qualifications for Occupational Therapist or Occupational Therapy Assistant License) or if foreign-trained, have met substantially equivalent academic and supervised field work requirements as per §454.205 of the Act (relating to Foreign-Trained Applicants);
- (5) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and
- (6) either meet the requirements in §364.2 of this title (relating to Initial License by Examination) and apply by examination or meet the requirements in §364.4 of this title (relating to Licensure by Endorsement) and apply by endorsement.

(b) The applicant must also meet the requirements in §364.2 of this title and apply by examination if the applicant:

- (1) has not passed the NBCOT certification examination; or
- (2) has passed the NBCOT certification examination and
 - (A) is not currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or
 - (B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(c) The applicant must also meet the requirements in §364.4 of this title and apply by endorsement if the applicant has passed the NBCOT certification examination and:

- (1) is currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or

(2) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(d) Applicants who are military service members, military veterans, and military spouses:

(1) The Board shall credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, with respect to an applicant who is a military service member or military veteran.

(2) The Board shall waive the application fees for a military service member or military veteran who is applying for a license by examination as per §364.2 of this title. In order to request a waiver of application fees, the military service member or military veteran must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(3) The Board shall waive the application fees and will expedite the issuance of a license for a military service member, military veteran, or military spouse who is applying for licensure by endorsement as per §364.4 of this title. In order to request a waiver of application fees and expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(4) In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) An application for license is valid for one year after the date it is received by the Board. At the end of the year, the application fee must be paid to continue the application process for the second year.

(f) An applicant who submits an application containing false information may be denied a license by the Board.

(g) Should the Board reject an application for license, the reasons for the rejection will be communicated in writing to the applicant. The applicant may submit additional information and request reconsideration by the Board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act.

(h) Applicants and new licensees shall refer to Chapter 369 of this title for provisions regarding information changes and verification of temporary or regular license issuance and current licensure.

(i) The first regular license is valid from the date of issuance until the last day of the applicant's birth month, with a duration of at least two years.

Source Note: The provisions of this §364.1 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective July 22, 2002, 27 TexReg 6545; amended to be effective May 31, 2007, 32 TexReg 2879; amended to be effective September 7, 2009, 34 TexReg 6123; amended to

be effective December 2, 2013, 38 TexReg 8681; amended to be effective June 1, 2015, 40 TexReg 3197; amended to be effective January 1, 2016, 40 TexReg 8664; amended to be effective January 1, 2019, 43 TexReg 7911; amended to be effective September 1, 2020, 45 TexReg 5660.

§364.2. Initial License by Examination.

(a) An applicant applying for license by examination must:

- (1) meet all provisions of §364.1 of this title (relating to Requirements for a License); and
- (2) pass the NBCOT certification examination for occupational therapists or occupational therapy assistants with a score set by NBCOT. Score reports must be sent directly to the Board by NBCOT.

(b) The application for license must be received no later than two years following the date of the passing examination. If the application is received after this time, the applicant must take and pass the NBCOT examination for licensure purposes only. The applicant must request Board approval to take this examination. The score report must be sent directly to the Board by NBCOT.

(c) An applicant who fails an examination may take additional examinations by sending in the appropriate, non-refundable fee as set by the Executive Council with the Board's re-exam form.

(d) Applicants with a history of licensure in occupational therapy in a state or territory of the U.S. If the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action, the applicant must submit a verification of license. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board.

(e) Previous Texas licensees are not eligible for Initial License by Examination.

Source Note: The provisions of this §364.2 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective January 9, 2012, 37 TexReg 68; amended to be effective June 1, 2015, 40 TexReg 3197; amended to be effective January 1, 2016, 40 TexReg 8664; amended to be effective September 1, 2020, 45 TexReg 5660.

§364.3. Temporary License.

(a) The Board may only issue a temporary license to an applicant who is taking the NBCOT certification examination for the first time.

(b) Temporary Licensure is not available to applicants who have received a license in any state or territory of the U.S. as an occupational therapy practitioner or to applicants applying from the U.S. military or a non-licensing state or territory of the U.S. who have had occupational therapy employment for at least two years preceding application for a Texas license, unless it was as an occupational therapy assistant, and they now meet the requirements for a temporary license as an occupational therapist, or it was as an occupational therapist, and they now meet the requirements for a temporary license as an occupational therapy assistant. In this section, "occupational therapy practitioner" means an individual licensed as an occupational therapist or occupational therapy assistant in any state or territory of the U.S.

(c) To be issued a temporary license, the applicant must:

- (1) meet all provisions of §364.1 of this title (relating to Requirements for a License);
 - (2) meet all provisions of §364.2 of this title (relating to License by Examination);
 - (3) submit the Confirmation of Examination Registration and Eligibility to Examine form from NBCOT, which must be sent directly to the Board by NBCOT and which reflects the eligibility window in which the applicant will take the examination;
 - (4) submit a copy of the receipt showing that an NBCOT score report has been ordered for the Board;
 - (5) submit a signed verification of supervision on a form prescribed by the Board; and
 - (6) send the Board the non-refundable temporary license fee as set by the Executive Council.
- (d) If the applicant fails the examination, fails to take the examination during the eligibility window as stated on the Confirmation of Examination Registration and Eligibility to Examine form from NBCOT, or fails to have the score reported, the temporary license is void and must be returned to the Board.
- (e) An additional temporary license will not be issued.
- (f) A temporary license shall be valid no longer than 180 days.

Source Note: The provisions of this §364.3 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective July 22, 2002, 27 TexReg 6545; amended to be effective September 7, 2009, 34 TexReg 6123; amended to be effective January 9, 2012, 37 TexReg 68; amended to be effective June 1, 2015, 40 TexReg 3197; amended to be effective January 1, 2016, 40 TexReg 8664; amended to be effective September 1, 2020, 45 TexReg 5660.

§364.4. Licensure by Endorsement.

(a) The Board may issue a license by endorsement to applicants who have passed the NBCOT certification examination and are either currently licensed in another state or territory of the U.S. that has licensing requirements substantially equivalent to this state or, if not currently licensed in a state or territory of the U.S., are applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license. Previous Texas licensees are not eligible for Licensure by Endorsement. An applicant seeking licensure by endorsement must:

- (1) meet all provisions of §364.1 of this title (relating to Requirements for Licensure);
- (2) arrange to have NBCOT send directly to the Board the applicant's NBCOT certification examination score report (or for applicants examined prior to 1986, a Verification of Certification form); and
- (3) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board. If the applicant is not currently licensed in a state or territory of the U.S. and is applying from the U.S. military

or a non-licensing state or territory of the U.S., a Verification of Employment form must be submitted substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license.

(b) **Provisional License:** The Board may grant a Provisional License to an applicant who is applying for licensure by endorsement if there is an unwarranted delay in the submission of required documentation outside the applicant's control. All other requirements for licensure by endorsement must be met. The applicant must also submit the Provisional License fee as set by the Executive Council. The Board may not grant a provisional license to applicants with disciplinary action in their license history or to applicants with pending disciplinary action. The Provisional License will have a duration of 180 days.

Source Note: The provisions of this §364.4 adopted to be effective February 12, 2001, 26 TexReg 1347; amended to be effective July 22, 2001, 26 TexReg 5440; amended to be effective October 20, 2002, 27 TexReg 9626; amended to be effective February 12, 2004, 29 TexReg 1227; amended to be effective June 18, 2009, 34 TexReg 3982; amended to be effective June 1, 2015, 40 TexReg 3197; amended to be effective September 1, 2020, 45 TexReg 5660.

§364.5. Recognition of Out-of-State License of Military Spouse.

(a) A military spouse may engage in the practice of occupational therapy without obtaining the applicable occupational therapy license if the military spouse is currently licensed in good standing by another jurisdiction of the U.S. that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Before engaging in the practice of occupational therapy, the military spouse must:

(1) notify the Board in writing of the following:

(A) the military spouse's intent to practice in this state;

(B) the military spouse's full name and any previous last names, social security number, date of birth, residential address, business address, email address, and a chosen address of record;

(C) the license type, license number, and jurisdiction in which the military spouse is currently licensed in good standing; and

(D) a list of all jurisdictions in which the military spouse has held or currently holds a license with the license type, license number, and license expiration date of each;

(2) submit to the Board proof of the military spouse's residency in this state and a copy of the military spouse's military identification card. Proof of residency may include a copy of the permanent change of station order for the military service member to whom the spouse is married; and

(3) receive from the Board written confirmation that:

(A) the Board has verified the military spouse's license in the other jurisdiction; and

(B) the military spouse is authorized to engage in the practice of occupational therapy in accordance with this section.

(c) The military spouse shall comply with all other Board laws and regulations applicable to the practice of occupational therapy in this state. The military spouse may be subject to revocation of the authorization described by subsection (b)(3)(B) of this section for failure to comply with Board laws and regulations and the Board may notify any jurisdictions in which the military spouse is licensed of the revocation of such.

(d) A military spouse may engage in the practice of occupational therapy under the authority of this section only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in this state but not to exceed three years from the date the military spouse receives the confirmation described by subsection (b)(3) of this section. During this authorization period, the military spouse must:

(1) maintain a current license in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state;

(2) update the Board of any changes to information as specified in subsections (b)(1)(B)-(C) and (b)(2) of this section within 30 days of such change(s); and

(3) notify the Board within 30 days of any disciplinary action taken against the military spouse by another jurisdiction.

(e) The Board will identify, with respect to each type of license issued by the Board, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and the Board shall verify that a military spouse is licensed in good standing in the jurisdiction upon receipt of the items described by subsection (b)(1)-(2) of this section.

(f) In this section, "military service member" and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

Source Note: The provisions of this §364.5 adopted to be effective December 1, 2019, 44 TexReg 6899; amended to be effective December 1, 2021, 46 TexReg 7805.

CHAPTER 367 CONTINUING EDUCATION

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement must meet the definition of continuing education as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education activities and for selecting continuing education as per the requirements in this chapter.

(1) Definition of Continuing Education; also known as CE. Continuing Education - Professional development activities that meet the requirements in this chapter and directly concern one or more of the following:

- (A) occupational therapy practice as defined in §362.1 of this title (relating to Definitions);
- (B) health conditions treated by occupational therapy;
- (C) ethical or regulatory matters in occupational therapy; or
- (D) occupational therapy documentation or reimbursement for occupational therapy services.

(2) Unacceptable Activities. Unacceptable professional development activities not eligible for continuing education include but are not limited to:

- (A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.
- (B) Business meetings.
- (C) Exhibit hall attendance.
- (D) Reading journals.
- (E) Courses that provide information about the work setting's philosophy, policies, or procedures or designed to educate employees about a specific work setting.
- (F) Courses in topics concerning professionalism or customer service.
- (G) Courses such as: social work; defensive driving; water safety; team building; GRE, GMAT, MCAT preparation; general foreign languages; disposal of hazardous waste; patient privacy; CPR; First Aid; HIPAA; and FERPA.

(b) Required Continuing Education Hours.

(1) Unless otherwise specified in this chapter, 1 hour of continuing education is equal to 1 contact hour.

(2) All licensees must complete a minimum of 24 contact hours every two years during the period of time the license is current in order to renew the license. Licensees must provide proof of completion of contact hours at the Board's request.

(3) Training on Human Trafficking. As part of the minimum hours of required continuing education for each renewal, licensees must complete a training course on human trafficking that is approved by the Health and Human Services Commission. Documentation of completion of a training course is a certificate of completion or letter of verification indicating credit awarded.

(A) Pre-Approved Credit and Additional Credit. The completion of one training course per renewal period to meet the training requirement is pre-approved for continuing education credit up to a maximum of 2 contact hours. Additional continuing education credit may be earned for a training course exceeding 2 hours if the additional hours meet the requirements of this chapter.

(B) Repeated Course. A specific training course completed during one renewal period to meet the training requirement may be completed again during the next renewal period to meet the training requirement for that next renewal. Up to a maximum of 2 contact hours from the repeated course are exempt from subsection (c) of this section and may be applied toward license renewal.

(4) Licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period.

(c) Each continuing education activity may be counted only one time in two renewal cycles.

(d) Activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved for CE credit for license renewal. The Board will review its approval process and continuation thereof for educational activities at least every five years.

(e) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

Source Note: The provisions of this §367.1 adopted to be effective October 11, 1994, 19 TexReg 7714; amended to be effective January 1, 1996, 20 TexReg 10907; amended to be effective February 2, 1999, 24 TexReg 606; amended to be effective February 3, 2000, 25 TexReg 818; amended to be effective August 21, 2000, 25 TexReg 8063; amended to be effective July 22, 2001, 26 TexReg 5441; amended to be effective January 1, 2003, 27 TexReg 12015; amended to be effective October 27, 2003, 28 TexReg 9291; amended to be effective August 29, 2006, 31 TexReg 6801; amended to be effective May 31, 2007, 32 TexReg 2880; amended to be effective February 25, 2008, 33 TexReg 1603; amended to be effective February 14, 2013, 38 TexReg 676; amended to be effective October 1, 2015, 40 TexReg 5802; amended to be effective July 1, 2016, 41 TexReg 4048; amended to be effective June 1, 2017, 42 TexReg 2738; amended to be effective September 1, 2019, 44 TexReg 4325; amended to be effective September 1, 2020, 45 TexReg 5661.

§367.2. Categories of Education.

Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the following categories and meeting further requirements in this chapter.

(1) Formal academic courses from an occupational therapy program.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: 3 contact hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a 3 credit course counts for 9 contact hours, no maximum. Documentation shall include a transcript from the accredited college or university.

(B) Creation of a new course or courses at or through an accredited college or university may be counted for 10 contact hours maximum. Documentation shall be a letter from the Program Director.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, internet-based courses, conferences, and home-study courses with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation shall include a certificate of completion or letter of verification.

(3) Development of publications, media materials, or grant/research activities. Documentation shall include a copy of the actual publication or media material(s) or a letter of verification documenting acceptance for publication or distribution, or title page and receipt of grant or research proposal.

(A) Published scholarly work in a peer-review journal.

(i) Primary or second author, 15 contact hours maximum.

(ii) Other author, consultant, reviewer, or editor, 5 contact hours maximum.

(B) Grant or research proposals accepted for consideration.

(i) Principal investigator or co-principal investigator, 10 contact hours maximum.

(ii) Consultant or reviewer, 4 contact hours maximum.

(C) Published book.

(i) Primary author or book editor, 15 contact hours maximum.

(ii) Second or other author, 7 contact hours maximum.

(iii) Consultant or reviewer, 5 contact hours maximum.

(D) Published book chapter or monograph.

(i) Primary author, 7 contact hours maximum.

(ii) Second or other author, consultant, reviewer, or editor, 2 contact

hours maximum.

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, 2 contact hours maximum.

(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use), 15 contact hours maximum.

(4) Presentations by licensee. Documentation shall include verification of presentation noting the date, title, and number of contact hours of the presentation, presenter(s), and type of presentation (i.e., 2 hour poster, 3 hour workshop). Any presentation may be counted only once.

(A) Professional presentation, e.g. in-services, workshops, institutes. Hour for hour credit. 10 contact hours maximum.

(B) Community/Service organization presentation. Hour for hour credit. 10 contact hours maximum.

(5) Supervision of students completing an accredited educational program or re-entry course.

(A) A licensee may earn a maximum of 10 contact hours for student supervision per renewal period.

(B) Fieldwork Supervision.

(i) Fieldwork Level 1: A licensee may earn .025 contact hours for each hour of supervision provided to a student.

(ii) Fieldwork Level 2:

(I) A licensee may earn 6 contact hours for 8 weeks of supervision provided to a student.

(II) A licensee may earn 9 contact hours for 12 weeks of supervision provided to a student.

(III) Licensees may divide fieldwork supervision hours based on the supervision provided.

(iii) Documentation shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(C) Student Project Supervision.

(i) A licensee may earn .025 contact hours for each hour of supervision provided to a student completing a supervised project for the accredited educational program.

(ii) Documentation shall include the following:

(I) verification provided by the school to the supervisor with the name of the student, school and academic program, and dates of the semester for which the project was completed; and

(II) an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.

(D) Supervision of a Re-Entry Student.

(i) A licensee may earn CE for the supervision of a student completing a re-entry course through an accredited college or university.

(ii) A licensee may earn 3 contact hours for 4 weeks of supervision.

(iii) A licensee may earn 6 contact hours for 8 weeks of supervision.

(iv) Licensees may divide fieldwork supervision hours based on the supervision provided.

(v) Documentation shall include verification provided by the school to the supervisor(s) with the name of the student, school and re-entry program, and dates of the supervision rotation or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(6) Mentorship.

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one contact hour for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 contact hours.

(D) Participation as Mentor: A licensee may earn one contact hour for each 5 hours spent in activities as a mentor up to a maximum of 10 contact hours.

(7) Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT for the purpose of tangible outcomes such as official documents, publications, and official reports. Documentation shall include a copy of the actual publication or official document/report that reflects the licensee's name. Maximum of 10 contact hours.

(8) NBCOT Navigator® Activities. Licensees may earn CE for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of 1 contact hour, no maximum. Documentation is a certificate of completion or letter of verification. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

(9) AOTA Benchmark. Licensees may earn CE for the completion of the AOTA Benchmark. Documentation is a certificate of completion or letter of verification indicating credit awarded. No maximum.

(10) Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

Source Note: The provisions of this §367.2 adopted to be effective July 22, 2001, 26 TexReg 5441; amended to be effective August 29, 2006, 31 TexReg 6801; amended to be effective May 31, 2007, 32 TexReg 2880; amended to be effective June 18, 2009, 34 TexReg 3983; amended to be effective March 21, 2010, 35 TexReg 2313; amended to be effective June 7, 2012, 37 TexReg 4068; amended to be effective February 14, 2013, 38 TexReg 676; amended to be effective December 2, 2013, 38 TexReg 8682; amended to be effective September 28, 2014, 39 TexReg 7782; amended to be effective June 1, 2015, 40 TexReg 3198; amended to be effective July 1, 2016, 41 TexReg 4048; amended to be effective June 1, 2017, 42 TexReg 2738; amended to be effective March 1, 2018, 43 TexReg 901; amended to be effective September 1, 2019, 44 TexReg 4325.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes.

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, certificates of completion, and letters of verification.

(e) Documentation must identify the licensee by name, and must include the date and title of the course, the name and signature of the authorized signer, and the number of hours or contact hours awarded for the course. When continuing education units (CEUs), professional

development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

Source Note: The provisions of this §367.3 adopted to be effective July 22, 2001, 26 TexReg 5441; amended to be effective August 29, 2006, 31 TexReg 6801; amended to be effective February 14, 2013, 38 TexReg 676; amended to be effective September 28, 2014, 39 TexReg 7782; amended to be effective October 1, 2015, 40 TexReg 5802; amended to be effective July 1, 2016, 41 TexReg 4048; amended to be effective September 1, 2019, 44 TexReg 4325.

§367.4. Process for Selecting a Peer Organization to Evaluate and Approve Continuing Education Courses.

If the Board chooses to authorize a license holder peer organization in Texas to evaluate and approve continuing education courses:

- (1) The Board will conduct a request for proposals and bid process to select an organization, and
- (2) The Board will request bids and proposals at least once every four years.

Source Note: The provisions of this §367.4 adopted to be effective March 1, 2018, 43 TexReg 901.

CHAPTER 368 OPEN RECORDS

§368.1. Open Records.

(a) Open Records Requests. Inspection of Public Records under the Texas Open Records Act, Texas Civil Statutes, Article 8890, §9(c) and (d), provide that all of the records of the board are public records and are available for public inspection during normal business hours except that investigative files and records of the board are confidential. In addition, the exceptions to disclosure in Texas Civil Statutes, Article 6252-17a, may protect certain information. This rule is promulgated pursuant to Article 6252-17a to establish a records review process that is efficient, safe, and timely to the public and to the agency.

- (1) Requests must be in writing and reasonably identify the records requested.
- (2) Records access will be by appointment only.
- (3) Records access is available only during the regular business hours of the agency.
- (4) Unless confidential information is involved, review may be by physical access or by duplication at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will be provided the option of receiving copies. Costs of duplication shall be the responsibility of the requesting party in accordance with the established board fee policy, payable at the time of receipt of records, if in person; or in advance, if by mail. The board may, in its discretion, waive fees if it is in the public interest to do so.
- (5) When the safety of any public record is at issue, physical access may be denied and the records will be provided by duplication as previously described.
- (6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g., court order.
- (7) All open records request appointments will be referred to the executive director or designee before complying with a request.
- (8) The open records coordinator for the agency is the executive director and the alternate is the director's designee.

(b) Charges for Copies of Public Records. The charge to any person requesting reproductions of any readily available record of the Texas Board of Occupational Therapy Examiners will be the charges established by the General Services Commission.

(c) The board may waive these charges if there is a public benefit. The executive director of the Executive Council of Physical Therapy and Occupational Therapy Examiners is authorized to determine whether a public benefit exists on a case-by-case basis.

Source Note: The provisions of this §368.1 adopted to be effective October 11, 1994, 19 TexReg 7715.

CHAPTER 369 DISPLAY OF LICENSES

§369.1. Display of Licenses.

- (a) Licenses must be displayed in accordance with the Act, §454.214.
- (b) The original license must be prominently displayed in the licensee's principal place of business as designated by the licensee. Reproduction of the original license is only authorized for institutional file purposes and not for public display.
- (c) A licensee may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification page. The Board will maintain a secure resource for verification of license status and expiration date on its website.
- (d) A licensee shall not make any alteration(s) on a license.
- (e) The Board may issue a copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. The Board may issue a replacement copy of a license to reflect a name change upon receipt of a written request, the appropriate fee, and a copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing the name change.

Source Note: The provisions of this §369.1 adopted to be effective October 11, 1994, 19 TexReg 7715; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective June 10, 2012, 37 TexReg 4068; amended to be effective October 1, 2015, 40 TexReg 5802; amended to be effective December 1, 2016, 41 TexReg 9163.

§369.2. Changes of Name or Address.

- (a) A licensee or applicant shall notify the Board in writing of changes in name, residential address, business address, mailing address, and/or email address within 30 days of such change(s). Applicants and temporary licensees, in addition, shall notify the Board in writing of changes of supervisor within 30 days of such change(s). A copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing a change in name must be submitted by the licensee or applicant with any written notification of a change in name. To request a replacement copy of the license to reflect a name change, refer to §369.1 of this title (relating to Display of Licenses).
- (b) The address of record is the physical address that will be provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.
- (c) Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to disciplinary action.

Source Note: The provisions of this §369.2 adopted to be effective October 11, 1994, 19 TexReg 7715; amended to be effective January 1, 1996, 20 TexReg 10907; amended to be effective October 1, 2015, 40 TexReg 5802; amended to be effective June 1, 2019, 44 TexReg 2464.

§369.3. Use of Titles.

(a) A licensed occupational therapist shall use the title occupational therapist or the initials OT. OTR® is an alternate term for OT if an individual who is licensed by this board takes the responsibility for ensuring that he or she is qualified to use it by maintaining certification through NBCOT.

(b) A licensed occupational therapy assistant shall use the title occupational therapy assistant or the initials OTA. COTA® is an alternate term for OTA if an individual who is licensed by this board takes the responsibility for ensuring that he or she is qualified to use it by maintaining certification through NBCOT.

(c) No other titles or initials are conferred for a license from this board.

(d) Except when practicing as an occupational therapy practitioner in a higher education setting or when signing as an author for a publication, and that publication requires a recognized publication format, any letters designating other titles, academic degrees, or certifications must follow the initials OT or OTA (example John Doe, OT, CHT or Jane Doe, OTR, PhD).

(e) Limitations. A person who does not hold a license to practice occupational therapy in Texas may not use any of the following terms in conjunction with their business, work, or services:

(1) "occupational therapist," "licensed occupational therapist," "occupational therapist, registered;"

(2) "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant;"

(3) "OT," "OTR," "LOT," "OTR/L;"

(4) "OTA," "LOTA," "COTA," "COTA/L;" or

(5) any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant.

Source Note: The provisions of this §369.3 adopted to be effective October 11, 1994, 19 TexReg 7715; amended to be effective May 8, 1996, 21 TexReg 3715; amended to be effective November 4, 1997, 22 TexReg 10750; amended to be effective September 7, 2009, 34 TexReg 6123; amended to be effective August 19, 2010, 35 TexReg 7082; amended to be effective January 9, 2012, 37 TexReg 68; amended to be effective October 6, 2013, 38 TexReg 6930.

CHAPTER 370 LICENSE RENEWAL

§370.1. License Renewal.

(a) Licensee Renewal. Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. Licenses and license expiration dates should be verified on the Board's license verification web page.

(1) General Requirements. The renewal application is not complete until the Board receives all required items. The components required for license renewal are:

(A) a complete renewal application form as prescribed by the Board verifying completion of the required continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees as set by the Executive Council that may be due;

(C) a passing score on the jurisprudence examination;

(D) the licensee's physical address, any work address, other mailing address, email address, and a chosen address of record; and

(E) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) The renewal process is not complete until the Board's license verification web page reflects that the license has been renewed by displaying the new renewal date.

(4) Renewal fees and late fees are non-refundable.

(5) Licensees electing to change their status or renewing a license on inactive or retired status must meet further requirements as per Chapter 371 of this title (relating to Inactive and Retired Status).

(6) Licensees renewing a license expired one year or more must meet further requirements as per §370.3 of this title (relating to Restoration of a Texas License).

(b) Restrictions to Renewal. The Board will not renew a license if it receives information from a child support agency that a licensee has failed to pay child support under a support order for six months or more as provided by Texas Family Code §232.0135. If all other renewal requirements have been met, the license will be renewed when the child support agency notifies the Board it may renew the license.

Source Note: The provisions of this §370.1 adopted to be effective October 11, 1994, 19 TexReg 7716; amended to be effective January 1, 1996, 20 TexReg 10908; amended to be effective May 8, 1996, 21 TexReg 3715; amended to be effective November 4, 1997, 22 TexReg 10751; amended to be effective October 25, 1998, 23 TexReg 10912; amended to be effective February 12, 2001, 26 TexReg 1348; amended to be effective July 22, 2001, 26 TexReg 5442; amended to be effective October 27, 2003, 28 TexReg 9291; amended to be effective December 4, 2005, 30 TexReg 7891; amended to be effective May 31, 2007, 32 TexReg 2880; amended to be effective June 10, 2012, 37 TexReg 4069; amended to be effective December 2, 2013, 38 TexReg 8682; amended to be effective January 1, 2016, 40 TexReg 8665; amended to be effective January 1, 2019, 43 TexReg 7913; amended to be effective December 1, 2019, 44 TexReg 6899.

§370.2. Late Renewal.

(a) A renewal application is late if all the required renewal materials do not bear a postmark or electronic time-stamp showing a date prior to the expiration of the license.

(b) If the license has been expired for less than one year, the person may renew the license by completing all renewal requirements and submitting the renewal fee and the appropriate late fee.

(c) Military Service:

(1) A licensee will be exempt from late fees and penalty for failure to timely renew a license if the licensee establishes to the satisfaction of the Board that failure to renew the license in a timely manner was because the licensee was serving as a military service member.

(2) A licensee who is a military service member is entitled to two years of additional time after the expiration of the license to complete:

(A) any continuing education requirements; and

(B) any other requirements related to the renewal of the license.

(3) In this section, "military service member" has the meaning as defined in Chapter 55, Occupations Code, §55.001.

Source Note: The provisions of this §370.2 adopted to be effective May 31, 2007, 32 TexReg 2880; amended to be effective June 18, 2009, 34 TexReg 3983; amended to be effective January 1, 2010, 34 TexReg 8968; amended to be effective November 28, 2010, 35 TexReg 10235; amended to be effective January 1, 2016, 40 TexReg 8665; amended to be effective September 1, 2020, 45 TexReg 5661.

§370.3. Restoration of a Texas License.

(a) Restoration of a license expired one year or more to a person with a current license or occupational therapy employment:

(1) The Board may restore a license to a person whose Texas license has been expired one year or more if the person:

(A) is currently licensed in another state or territory of the U.S. and that license has not been suspended, revoked, cancelled, surrendered or otherwise restricted for any reason; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form;

(B) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;

(C) submit documentation of the completion of training on human trafficking as described in §367.1 of this title (relating to Continuing Education) that meets documentation requirements as per §367.3 of this title (relating to Continuing Education Audit);

(D) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board. If the applicant is not currently licensed in a state or territory of the U.S. and is applying from the U.S. military or a non-licensing state or territory of the U.S., a Verification of Employment form must be submitted substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

(E) pass the jurisprudence examination;

(F) pay the restoration fee; and

(G) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(b) Restoration of a license expired at least one year but less than two years to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired at least one year but less than two years to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form;

(B) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;

(C) submit copies of the completed continuing education showing 36 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter;

(D) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board;

(E) pass the jurisprudence examination;

(F) pay the restoration fee; and

(G) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

- (ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or
 - (iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.
- (c) Restoration of a license expired two years or more to a person without a current license or occupational therapy employment:
 - (1) The Board may restore a license expired two years or more to a person who was licensed in Texas and:
 - (A) is not currently licensed in another state or territory of the U.S.; or
 - (B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.
 - (2) The person shall meet the following requirements:
 - (A) submit a completed restoration application form;
 - (B) submit in paper or electronic form a current color photograph that meets the requirements for a U.S. passport. A photograph in electronic form must be of a high-quality resolution comparable to that of a passport photograph in paper form;
 - (C) submit documentation of the completion of training on human trafficking as described in §367.1 of this title (relating to Continuing Education) that meets documentation requirements as per §367.3 of this title (relating to Continuing Education Audit);
 - (D) submit a verification of license if the Board cannot verify the applicant's history of licensure in occupational therapy, including disciplinary action. The verification must be an original verification sent directly to the Board by the licensing board of the state or territory. Disciplinary action must be reported to the Board;
 - (E) pass the jurisprudence examination;
 - (F) pay the restoration fee;
 - (G) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status; and

(H) satisfy one of the following no more than two years prior to the submission of the application:

(i) complete a re-entry course through an accredited college or university and submit the certificate of completion or transcript to the Board;

(ii) obtain an advanced or post-professional occupational therapy degree, with an official transcript sent to the Board; or

(iii) take and pass the NBCOT examination for licensure purposes only (after requesting Board approval to take the examination) and have the passing score reported to the Board directly by NBCOT.

(d) The Board shall expedite the restoration of a license to a military service member, military veteran, or military spouse. To request expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation. In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) The licensee whose license has been restored shall refer to Chapter 369 of this title for provisions regarding verification of current licensure.

(f) The restoration fee as set by the Executive Council is nonrefundable.

(g) Restoration requirements must be met within one year of the Board's receipt of the application. Restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration.

Source Note: The provisions of this §370.3 adopted to be effective November 28, 2010, 35 TexReg 10235; amended to be effective January 9, 2012, 37 TexReg 69; amended to be effective June 1, 2015, 40 TexReg 3198; amended to be effective January 1, 2016, 40 TexReg 8665; amended to be effective July 1, 2016, 41 TexReg 4049; amended to be effective January 1, 2019, 43 TexReg 7913; amended to be effective September 1, 2020, 45 TexReg 5661.

CHAPTER 371 INACTIVE AND RETIRED STATUS

§371.1. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the Board. The Board may allow an individual who is not actively engaged in the practice of occupational therapy to put an active license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years and may not represent himself or herself as an occupational therapist or occupational therapy assistant.

(b) Required components to put a license on inactive status are:

- (1) a completed renewal application form documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);
- (2) the inactive status fee and any late fees that may be due; and
- (3) a passing score on the jurisprudence examination.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

- (1) a completed renewal application form documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);
- (2) the inactive status fee and any late fees that may be due; and
- (3) a passing score on the jurisprudence examination.

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time. The components required to return to active status are:

- (1) a completed renewal application form;
- (2) the active status renewal fee and any late fees that may be due;
- (3) a passing score on the jurisprudence examination;
- (4) proof of the required continuing education, if required; and
- (5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

- (A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) If the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).

(f) The inactive status fees and any late fees as set by the Executive Council are nonrefundable.

(g) Licensees on inactive status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

Source Note: The provisions of this §371.1 adopted to be effective October 11, 1994, 19 TexReg 7716; amended to be effective May 8, 1996, 21 TexReg 3716; amended to be effective November 4, 1997, 22 TexReg 10751; amended to be effective October 25, 1998, 23 TexReg 11167; amended to be effective February 3, 2000, 25 TexReg 818; amended to be effective May 20, 2001, 26 TexReg 3494; amended to be effective June 10, 2012, 37 TexReg 4069; amended to be effective July 1, 2016, 41 TexReg 4049; amended to be effective January 1, 2019, 43 TexReg 7915; amended to be effective September 1, 2020, 45 TexReg 5662.

§371.2. Retired Status.

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "Voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "Compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year. The license may only be put on retired status at the time of renewal.

(c) Requirements for initial retired status are:

(1) a completed retired status form;

- (2) a passing score on the jurisprudence examination;
 - (3) completion of 6 hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter;
 - (4) the retired status fee and any late fees that may be due; and
 - (5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:
 - (A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;
 - (B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or
 - (C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.
- (d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:
- (1) a completed retired status form;
 - (2) a passing score on the jurisprudence examination;
 - (3) the retired status fee and any late fees that may be due;
 - (4) completion of 6 hours of continuing education each license renewal period as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter; and
 - (5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:
 - (A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;
 - (B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or
 - (C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the active status renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal) and 18 additional hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education). A licensee who has been on retired status for one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License).

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

(i) The retired status fees and any late fees as set by the Executive Council are nonrefundable.

Source Note: The provisions of this §371.2 adopted to be effective August 29, 2006, 31 TexReg 6801; amended to be effective September 7, 2009, 34 TexReg 6124; amended to be effective June 10, 2012, 37 TexReg 4069; amended to be effective July 1, 2016, 41 TexReg 4049; amended to be effective January 1, 2019, 43 TexReg 7915; amended to be effective September 1, 2020, 45 TexReg 5662.

CHAPTER 372 PROVISION OF SERVICES

§372.1. Provision of Services.

(a) Medical Conditions.

(1) Occupational therapists may evaluate the client to determine the need for occupational therapy services without a referral. However, a referral must be requested at any time during the evaluation process when necessary to ensure the safety and welfare of the client.

(2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(b) Non-Medical Conditions. The evaluation or intervention for a non-medical condition does not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.

(c) Methods of Referral/Plan of Care documentation. The referral or signed plan of care must be from a licensed referral source in accordance with the Practice Act, §454.213 (relating to Accepted Practice; Practitioner's Referral), and may be transmitted in the following ways:

(1) by a written document, including paper or electronic information/communications technologies;

(2) verbally, either in person or by electronic information/communications technologies. If a referral is transmitted verbally, it must be documented by the authorized personnel who receives the referral. In this section, "authorized personnel" means staff members authorized by the employer or occupational therapist to receive referrals transmitted verbally; or

(3) by an occupational therapy plan of care, developed according to the requirements of this section, that is signed by the licensed referral source.

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner without a referral.

(e) Evaluation.

(1) Only an occupational therapist may perform an initial evaluation or any re-evaluations.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist is responsible for determining whether any aspect of the evaluation may be conducted via telehealth or must be conducted in person.

(4) The occupational therapist must have contact with the client during the evaluation via telehealth using synchronous audiovisual technology or in person. Other

telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.

(5) The occupational therapist may delegate to an occupational therapy assistant the collection of data for the evaluation. The occupational therapist is responsible for the accuracy of the data collected by the occupational therapy assistant.

(f) Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for anyone other than the occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) Modifications to the plan of care must be documented.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) Except where otherwise restricted by rule, the occupational therapy practitioner is responsible for determining whether any aspect of the intervention session may be conducted via telehealth or must be conducted in person.

(8) The occupational therapy practitioners must have contact with the client during the intervention session via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.

(9) Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, or therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.

(10) Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant tasks that they both agree are within the competency level of that occupational therapy assistant.

(g) Documentation.

(1) The client's records include the medical referral, if required, and the plan of care. The plan of care includes the initial evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and any re-evaluations, if required; any patient related documents; and the discharge or discontinuation of occupational therapy services documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) In each intervention note, the occupational therapy assistant must include the name of an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. The occupational therapist in the intervention note may be different from the occupational therapist who wrote the plan of care. The occupational therapy assistant may not provide services unless this requirement is met.

(h) Discharge or Discontinuation of Occupational Therapy Services.

(1) Only an occupational therapist has the authority to discharge clients from occupational therapy services. The discharge or discontinuation of occupational therapy services is based on whether the client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge or discontinuation of occupational therapy services documentation, and/or make recommendations for any further needs of the client in another continuum of care.

Source Note: The provisions of this §372.1 adopted to be effective October 11, 1994, 19 TexReg 7717; amended to be effective August 31, 1995, 20 TexReg 6337; amended to be effective May 8, 1996, 21 TexReg 3716; amended to be effective November 4, 1997, 22 TexReg 10752; amended to be effective October 25, 1998, 23 TexReg 10912; amended to be effective August 21, 2000, 25 TexReg 8063; amended to be effective July 22, 2001, 26 TexReg 5442; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective February 27, 2005, 30 TexReg 910; amended to be effective December 4, 2005, 30 TexReg 7892; amended to be effective February 25, 2008, 33 TexReg 1604; amended to be effective September 7, 2009, 34 TexReg 6124; amended to be effective January 9, 2012, 37 TexReg 69; amended to be effective October 6, 2013, 38 TexReg 6931; amended to be effective July 1, 2016, 41 TexReg 4050; amended to be effective March 1, 2017, 42 TexReg 696; amended to be effective March 1, 2018, 43 TexReg 902; amended to be effective June 1, 2019, 44 TexReg 2465.

§372.2. General Purpose Occupation-Based Instruction.

(a) Occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes including but not limited to handwriting groups, parent-child education classes, wellness-focused activities for facility residents, aquatics exercise groups, and cooking for diabetics classes.

(b) These services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. If a participant requires

individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services).

(c) When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction.

Source Note: The provisions of this §372.2 adopted to be effective July 1, 2016, 41 TexReg 4051; amended to be effective June 1, 2019, 44 TexReg 2465.

CHAPTER 373 SUPERVISION

§373.1. Supervision of Non-Licensed Personnel.

(a) Occupational Therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-licensed personnel must be under the supervision of an occupational therapy practitioner.

(b) Supervision in this section for occupational therapy aides as defined by the Practice Act, §454.002 (relating to Definitions), is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client.

(c) Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight.

(d) When occupational therapy practitioners delegate occupational therapy tasks to non-licensed personnel, the occupational therapy practitioners are responsible for ensuring that this person is adequately trained in the tasks delegated.

(e) The occupational therapy practitioners providing the intervention must interact with the client regarding the client's condition, progress, and/or achievement of goals during each intervention session.

(f) Delegation of tasks to non-licensed personnel includes but is not limited to:

- (1) routine department maintenance;
- (2) transportation of clients;
- (3) preparation or set up of intervention equipment and work area;
- (4) assisting clients with their personal needs during the intervention;
- (5) assisting in the construction of adaptive/assistive equipment and splints. The licensee must be on-site and attending for any initial applications to the client;
- (6) carrying out a predetermined segment or task in the client's care for which the client has demonstrated some previous performance ability in executing the task.

(g) The Non-Licensed Personnel may not:

- (1) perform occupational therapy evaluative procedures;
- (2) initiate, plan, adjust, or modify occupational therapy procedures;
- (3) act on behalf of the occupational therapist in any matter relating to occupational therapy which requires decision making or professional judgments;
- (4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising occupational therapy practitioner. Any documentation reflecting activities by

non-licensed personnel must identify the name and title of that person and the name of the supervising occupational therapy practitioner.

Source Note: The provisions of this §373.1 adopted to be effective January 9, 1995, 19 TexReg 10361; amended to be effective August 31, 1995, 20 TexReg 6337; amended to be effective May 8, 1996, 21 TexReg 3716; amended to be effective March 5, 1997, 22 TexReg 1898; amended to be effective November 4, 1997, 22 TexReg 10752; amended to be effective October 25, 1998, 23 TexReg 11167; amended to be effective July 22, 2001, 26 TexReg 5443; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective December 4, 2005, 30 TexReg 7893; amended to be effective September 7, 2009, 34 TexReg 6124; amended to be effective July 1, 2016, 41 TexReg 4052.

§373.2. Supervision of a Temporary Licensee.

(a) Requirements for all temporary licensees:

(1) A temporary licensee works under the supervision of a licensed occupational therapist who holds a regular license and whose name, license number, and employer information are on file on the Board's Supervision of a Temporary Licensee form. For each supervising occupational therapist and/or employer, the temporary licensee must submit the Supervision of a Temporary Licensee form. In this section, a supervising occupational therapist is any occupational therapist whether working full time, part time, or PRN (i.e., working on an as-needed basis), who delegates to the temporary licensee.

(2) All documentation completed by an individual holding a temporary license which becomes part of the client's permanent file must be approved and co-signed by one of the supervising occupational therapist(s).

(3) Temporary licensees may not supervise anyone.

(4) A temporary licensee does not become a regular licensee with those privileges until the regular license can be verified as being current and its expiration date is displayed on the Board's license verification page.

(b) Supervision of an occupational therapy assistant with a temporary license includes:

(1) On-the-Premises Supervision: When providing occupational therapy services, a temporary licensee must have supervision by an occupational therapist or occupational therapy assistant who is on the premises and holds a regular license.

(2) Supervision Log and Supervision Hours:

(A) The temporary licensee must complete supervision hours each month, which must be recorded on the Supervision Log. The Supervision Log is kept by the temporary licensee and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Log.

(B) All of the occupational therapists, whether working full time, part time, or PRN, who delegate to the temporary licensee must participate in the supervision hours, whether on a shared or rotational basis.

(C) For each employer, the temporary licensee must complete a separate Supervision Log, in addition to all other requirements.

(D) For those months when the licensee does not work as a temporary licensee, he or she shall write N/A in the Supervision Log.

(E) Supervision Logs are subject to audit by the Board.

(F) The temporary licensee is required to complete a minimum of sixteen supervision hours each month for each employer, which must include:

(i) a minimum of twelve hours of frequent communication between the supervising occupational therapist(s) and temporary licensee including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) a minimum of four hours of interactive supervision a month during which the occupational therapist, who is physically present with the temporary licensee, directly observes the temporary licensee providing services to one or more clients.

(c) Supervision of an occupational therapist with a temporary license includes:

(1) On-the-Premises Supervision: When providing occupational therapy services, a temporary licensee must have supervision by an occupational therapist who is on the premises and holds a regular license.

(2) Supervision Record and Required Supervision Communication and Encounters:

(A) The temporary licensee must receive supervision each month, which must be recorded on the Temporary Occupational Therapist Licensee Supervision Record. The Supervision Record is kept by the temporary licensee and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Record.

(B) All of the occupational therapists, whether working full time, part time, or PRN, who delegate to the temporary licensee must participate in the required supervision, whether on a shared or rotational basis.

(C) For each employer, the temporary licensee must complete a separate Supervision Record, in addition to all other requirements.

(D) For those months when the licensee does not work as a temporary licensee, he or she shall write N/A in the Supervision Record.

(E) Supervision Records are subject to audit by the Board.

(F) The temporary licensee is required to complete the following supervision requirements for each employer:

(i) frequent communication between the supervising occupational therapist(s) and temporary licensee including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) interactive encounters twice a month during which the occupational therapist, who is physically present with the temporary licensee, directly observes the temporary licensee providing services to one or more clients.

Source Note: The provisions of this §373.2 adopted to be effective July 22, 2001, 26 TexReg 5443; amended to be effective July 22, 2002, 27 TexReg 6546; amended to be effective August 29, 2006, 31 TexReg 6802; amended to be effective September 7, 2009, 34 TexReg 6124; amended to be effective August 19, 2010, 35 TexReg 7083; amended to be effective October 1, 2015, 40 TexReg 5803.

CHAPTER 374 DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

§374.1. Disciplinary Actions.

(a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.

(b) The board recognizes four levels of disciplinary action for its licensees.

(1) Level I: Order and/or Letter of Reprimand or Other Appropriate Disciplinary Action (including but not limited to community service hours).

(2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

(4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

(c) The board shall utilize the following schedule of sanctions in all disciplinary matters.

[Turn to the following page for the schedule of sanctions.]

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Impersonating another person holding an occupational therapy license or allowing another person to use his or her license	Sec. 454.301(a)(6) Sec. 454.201 §374.2(1)	30-45 day license suspension +up to \$100 per violation / Cease and desist letter to the impersonator	45-90 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare	Sec. 454.301(a)(6) §374.2(2)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession	Sec. 454.301(a)(6) §374.2(3)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report	Sec. 454.301(a)(6) §374.2(4)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Intentionally harassing, abusing, or intimidating a patient either physically or verbally	Sec. 454.301(a)(6) §374.2(5)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension with restricted practice +up to \$150 per violation; referral for criminal investigative entity	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations	Sec. 454.301(a)(6) §374.2(6)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Recommending or prescribing	Sec. 454.301(a)(6)	30-60 hours community	30-60 day license	Revocation or Surrender	Alternative disciplinary

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from the third person	§374.2(7)	service +up to \$100 per violation	suspension +up to \$150 per violation	of license +up to \$200 per violation	decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Breaching the confidentiality of the patient/therapist relationship	Sec. 454.301(a)(6) §374.2(8)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards	Sec. 454.301(a)(6) §374.2(9)	30-60 hours community service and additional course in ethics +up to \$100 per violation	30-60 day license suspension and additional course in ethics +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Practicing occupational therapy after the expiration of a temporary, provisional, or regular license	Sec. 454.301(a)(6) Sec. 454.201 §374.2(10)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Violation of Chapter 373 of this title (relating to Supervision)	Sec. 454.301(a)(6) §374.2(11)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
					the nature of the situation, repeat of violation, or development.
Advertising in a manner which is false, misleading, or deceptive / Advertised in a manner that in any way tends to deceive or defraud the public	Sec. 454.301(a)(6) §374.2(12) / Sec. 454.301(7)	Letter to cease and desist; if licensed, 30-60 hours community service +up to \$100 per violation	Letter to cease and desist; if licensed, 30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care	Sec. 454.301(a)(6) §374.2(13)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations	Sec. 454.301(a)(6) §374.2(14)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed CE Audit	§367.3	30-60 hours community service and completion of CE hours +up to \$100 per violation	30-60 day license suspension and completion of CE hours +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed to properly renew license	Sec. 454.252 Sec. 454.255 §367.1 §370.1	30-60 hours community service and completion of CE hours +up	30-60 day license suspension and completion of	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
		to \$100 per violation	CE hours +up to \$150 per violation		may depend on the nature of the situation, repeat of violation, or development.
Used drugs or intoxicating liquors to an extent that affects the applicant's or license holder's professional competence	Sec. 454.301(1)	30-90 day license suspension with restricted practice +up to \$100 per violation	6-12 month license suspension with restricted practice +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been convicted of a crime, other than a minor offense defined as a "minor misdemeanor," "violation," or "offense," in any court if the act for which the applicant or license holder was convicted is determined by the board to have a direct bearing on whether the applicant or license holder should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant	Sec. 454.301(2)	Restricted practice +up to \$100 per violation	30-60 day license suspension with restricted practice +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Obtained or attempted to obtain a license by fraud or deception	Sec. 454.301(3)	Letter of cease and desist for attempter / 30-60 day license suspension +up to \$100 per violation	60-90 day license suspension with restricted practice +up to \$150 per violation; referral for criminal investigative	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant	Sec. 454.301(4)	30-60 hours community service +up to \$100 per violation	entity 30-90 day license suspension with restricted practice +up to \$150 per violation; referral for criminal investigative entity	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been found mentally incompetent by a court	Sec. 454.301(5)	30-60 day license suspension with restricted practice +up to \$100 per violation	6-12 month license suspension with restricted practice +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Had a license to practice occupational therapy revoked or suspended or had other disciplinary action taken against the applicant or license holder by the proper licensing authority of another state, territory, or nation	Sec. 454.301(8)	30-60 hours community service +up to \$100 per violation	30-60 day license suspension with restricted practice +up to \$150 per violation	Revocation or Surrender of license +up to \$200 per violation	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

[Turn to the following page for the continued §374.1.]

(d) The board shall consider the following factors in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters:

- (1) the seriousness of the violation, including:
 - (A) the nature, circumstances, extent, and gravity of the violation; and
 - (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation;
- (5) the economic harm to the public interest or public confidence caused by the violation;
- (6) whether the violation was intentional; and
- (7) any other matter that justice requires.

(e) Licensees who provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupations Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.

(f) Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees.

(g) A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.

(h) The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021.

(i) A licensee or applicant is required to report to the board a felony of which he/she is convicted within 60 days after the conviction occurs.

Source Note: The provisions of this §374.1 adopted to be effective October 11, 1994, 19 TexReg 7718; amended to be effective August 31, 1995, 20 TexReg 6338; amended to be effective January 1, 1996, 20 TexReg 10908; amended to be effective May 8, 1996, 21 TexReg 3717; amended to be effective November 4, 1997, 22 TexReg 10754; amended to be effective July 22, 2001, 26 TexReg 5444; amended to be effective August 19, 2010, 35 TexReg 7083; amended to be effective January 1, 2019, 43 TexReg 7917; amended to be effective September 1, 2019, 44 TexReg 4328; amended to be effective December 1, 2020, 45 TexReg 8350.

§374.2. Detrimental Practice.

The Act, §454.301(a)(6) states "practiced occupational therapy in a manner detrimental to the public health and welfare," which is defined but not limited to the following:

- (1) impersonating another person holding an occupational therapy license or allowing another person to use his or her license;
- (2) using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare;
- (3) failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession;
- (4) intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report;
- (5) intentionally harassing, abusing, or intimidating a patient either physically or verbally;
- (6) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations;
- (7) recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from the third person;
- (8) breaching the confidentiality of the patient/therapist relationship;
- (9) failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards;
- (10) practicing occupational therapy after the expiration of a temporary, provisional, or regular license;
- (11) violation of Chapter 373 of this title (relating to Supervision);
- (12) advertising in a manner which is false, misleading, or deceptive;
- (13) failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care; or
- (14) failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations.

Source Note: The provisions of this §374.2 adopted to be effective October 11, 1994, 19 TexReg 7718; amended to be effective May 8, 1996, 21 TexReg 3718; amended to be effective July 22, 2001, 26 TexReg 5444; amended to be effective August 19, 2010, 35 TexReg 7084; amended to be effective June 1, 2015, 40 TexReg 3200; amended to be effective September 1, 2019, 44 TexReg 4328.

§374.3. Complaint Process.

(a) The Act, Subchapters G and H authorizes the board to investigate complaints.

(b) Filing and receipt of complaints.

(1) Complaints may be received in writing. Complainants shall be invited to explain their allegations. The staff will provide reasonable assistance to a person who wishes to file a complaint. Anonymous complaints will be accepted, but it is understood that the lack of a witness or the ability to secure additional information from the anonymous complainant may result in the board's inability to secure sufficient evidence to pursue action against the alleged violator.

(2) When a complaint is received, the board shall notify the parties to the complaint of the status of the complaint, unless the notice would jeopardize an undercover investigation. The board shall notify the parties to the complaint at least as frequently as quarterly until there is final disposition of the complaint, in accordance with the Act, §454.152.

(3) Not later than the tenth calendar day after a complaint is received, the staff shall place a timeline for completion of the investigation in the file and notify all parties to the complaint. Any change in the timeline must be noted in the file and all parties notified of the change not later than seven calendar days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(A) staff determines there is insufficient evidence to demonstrate a violation of the Act, board rules, or a board order; or

(B) staff determines that there is sufficient evidence to demonstrate a violation of the Act, board rules, or a board order and drafts proposed formal charges.

(4) The staff shall provide summary data of complaints extending beyond the complaint timeline to the coordinator and the executive director who will then notify the board at a regularly scheduled meeting.

(5) The board shall keep an information file on each complaint submitted to the board. The file will be kept current and include a record of all persons contacted in relation to the complaint, notes about the findings throughout the complaint process, and other relevant information.

(6) The Investigation Committee may determine when and if a private investigator is needed for processing of a complaint.

(7) Complaints shall be assigned a priority status in the following categories:

(A) Those indicating that credible evidence exists showing a violation of the Occupational Therapy Practice Act involving actual deception, fraud, or injury to

clients or the public or a high probability of immediate deception, fraud, or injury to clients or the public.

(B) Those indicating that credible evidence exists showing a violation of the Occupational Therapy Practice Act involving a high probability of potential deception, fraud, or injury to clients or the public.

(C) Those indicating that credible evidence exists showing a violation of the Occupational Therapy Practice Act involving a potential for deception, fraud, or injury to clients or the public.

(D) All other complaints.

(c) The Executive Director and the Investigation Committee will take appropriate action to investigate the complaint or take other appropriate action.

(1) The Investigation Committee will hold meetings, at least quarterly, to review complaints, to determine if there is sufficient evidence to substantiate the allegations, to hold informal conferences, to identify appropriate discipline for violations, and to make recommendations for disciplinary action to the board.

(2) The Investigation Committee reviews the evidence that has been submitted and gathered by the investigator and, typically makes one of the following determinations:

(A) The scope of the complaint is beyond the authority of the board and possibly may be handled by another entity. The committee may refer the complainant to an appropriate entity.

(B) There is insufficient evidence to substantiate that a violation of the Act or rules has occurred, thus closing the investigation.

(C) Evidence indicates a possible violation did occur and further investigation is needed.

(D) Evidence indicates a violation did occur and disciplinary action is not warranted.

(E) Evidence indicates a violation did occur and disciplinary action is warranted.

(d) Preliminary notice.

(1) Prior to commencing disciplinary proceedings, the staff shall serve the respondent with written notice in accordance with the Texas Government Code, §2001.54(c).

(2) Such notice shall contain a statement of the facts or conduct alleged to warrant an adverse action. The notice shall invite the respondent to show compliance with all requirements of the law for retention of the license.

(3) The respondent shall have not less than ten calendar days to respond in writing.

(e) Agreed orders.

- (1) An agreed order is a legal document and the formal means by which a respondent accepts the disciplinary action imposed by the board. To be a valid document it must be approved by the board and signed by both the respondent and the chair of the board.
 - (2) An agreed order may be negotiated with any person under the jurisdiction of the board, the terms of which shall be approved by the Investigation Committee.
 - (3) The agreed order will be sent to the respondent by certified mail. To accept the agreed order, the respondent must sign it in the presence of a notary and return it to the board within ten calendar days after receipt. Inaction by the respondent constitutes rejection. If the respondent rejects the proposed settlement, the matter shall be referred to the Investigation Committee for appropriate action.
 - (4) The agreed order with the notarized signature of the respondent will be presented to the board. The proposed agreed order shall have no effect until such time as the board may, at a scheduled meeting, take action approving the agreed order. The agreed order will include a provision requiring the respondent reimburse the board for all investigative expenses.
 - (5) The respondent shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the respondent is voluntary.
 - (6) Consideration by the board will include the following:
 - (A) Any board member who participated in the investigation of the complaint or formulation of the proposed agreed order may not vote on the agreed order.
 - (B) The respondent's identity will not be made available to the board until after the board has reviewed and made a decision on the agreed order.
 - (C) Upon an affirmative majority vote, the board shall authorize the agreed order, and the chair of the board will sign it. The board-approved agreed order will be provided to the respondent. A copy of the order will then be placed in the licensee's permanent file.
 - (D) If the board does not approve the agreed order, the matter will be referred to the Investigation Committee or the Executive Director for other appropriate action. The respondent and the complainant shall be so informed.
- (f) Dismissal of complaints.
- (1) Complaints may be dismissed for the following reasons:
 - (A) No evidence available.
 - (B) Insufficient evidence.
 - (C) Other reasons which the Investigation Committee believes are justification for dismissal.

(2) Upon the decision of the Investigation Committee to dismiss a complaint, the person who filed the complaint is provided a letter explaining why the complaint has been dismissed.

(3) On a quarterly basis, the board is provided with a list of the complaints that were dismissed and the reasons for the dismissals.

(4) At least annually the board will advise the Executive Council of complaints which have been disposed.

(g) Informal conference.

(1) At any time after the filing of a complaint, an informal conference may be held prior to the contested case hearing for one or more of the following purposes:

(A) Clarifying the issues;

(B) Considering proposed admissions or stipulations of fact;

(C) Reviewing the procedure to govern the contested case hearing;

(D) Exchanging witness lists and agreeing to limit the number of witnesses; and/or

(E) Doing any act that may simplify the proceedings, and dispose of matters in controversy, including settlement of issues in dispute and preparation of an agreed order for presentation to the board as provided herein.

(2) A respondent may request an informal settlement conference; however, the decision to hold a conference shall be made by the Executive Director or the Investigation Committee.

(3) Participation in an informal conference shall not be mandatory for the licensee or applicant, nor is it a prerequisite to a formal hearing.

(4) The Executive Director shall decide upon the time, date, and place of the settlement conference and provide written notice to the respondent of the same. Notice shall be provided no less than ten calendar days prior to the date of the conference by certified mail, return receipt requested to the last known address of the respondent. The ten days shall begin on the date of certified mailing. The respondent may waive the ten-day notice requirement.

(A) The notice shall inform the respondent of the following:

(i) the nature of the alleged violation;

(ii) that the respondent may be represented by legal counsel;

(iii) that the respondent may offer the testimony of witnesses and present other evidence as may be appropriate;

(iv) that a board member may be present;

(v) that a representative of the Office of the Attorney General will be present;

(vi) that the respondent's attendance and participation is voluntary;

(vii) that the complainant and any client involved in the alleged violations may be present; and

(viii) that the settlement conference shall be canceled if the respondent notifies the Executive Director that he or she will not attend.

(B) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference.

(5) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant's last known address. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.

(6) Participants in the informal conference may include a board member, agency staff, the complainant, the respondent, attorneys representing any of the participants, and any other persons determined by the Investigation Committee or the Executive Director to be necessary for proper conduct of the conference. All other persons may be excluded.

(7) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(8) The respondent, the respondent's attorney, a board member, and board staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(9) An attorney from the Office of the Attorney General shall attend each settlement conference. The board member or Executive Director may call upon the attorney at any time for assistance in the settlement conference.

(10) The respondent shall be afforded the opportunity to make statements on his or her own behalf.

(11) Access to the board's investigative file may be prohibited or limited in accordance with the Administrative Procedures Act (APA), Chapter 2001, Texas Government Code, and the Open Records Act, Chapter 552, Texas Government Code.

(12) No formal recording of the settlement conference shall be made.

(13) At the conclusion of the settlement conference, the board member or the Executive Director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Occupational Therapy Practice Act. The board member or the Executive Director may also conclude that the board lacks jurisdiction, that a violation of the Act or this

chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(h) The board follows the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, for resolution of complaints as a contested case. A copy of the APA procedures may be obtained from the board.

(i) Should the recommendation for an informal disposition not be accepted by the respondent, the complaint shall be referred back to the Investigation Committee for appropriate action. The committee shall determine if the case should be referred to the State Office of Administrative Hearings (SOAH) or dismissed for insufficient evidence or other reasons justifying a dismissal.

(j) If the Investigation Committee determines that a violation has occurred and the respondent is not under the jurisdiction of the board, the committee has the option of referring the case to the appropriate authority: district attorney, county attorney, etc.

Source Note: The provisions of this §374.3 adopted to be effective May 8, 1996, 21 TexReg 3718; amended to be effective July 22, 2001, 26 TexReg 5444.

§374.4. Code of Ethics.

(a) The Texas Board of Occupational Therapy Examiners' Code of Ethics is a public statement of the principles and related standards of conduct used in promoting and maintaining high standards of behavior in occupational therapy within the state of Texas. The Code of Ethics is a set of principles and standards that applies to occupational therapy practitioners. ("Practitioners" in this section are defined as those individuals licensed by this Board or applicants for licensure with this Board.)

(b) Principles and Related Standards of Conduct:

Principles and Related Standards of Conduct

The principles and related standards of conduct that follow are from the Occupational Therapy Code of Ethics (2015), by the American Occupational Therapy Association, as published in *American Journal of Occupational Therapy*, 69, 6913410030p1-6913410030p8. <http://dx.doi.org/10.5014/ajot.2015.696S03>.

Beneficence

Principle 1. Occupational therapy personnel shall demonstrate a concern for the well-being and safety of the recipients of their services.

Beneficence includes all forms of action intended to benefit other persons. The term *beneficence* connotes acts of mercy, kindness, and charity (Beauchamp & Childress, 2013). Beneficence requires taking action by helping others, in other words, by promoting good, by preventing harm, and by removing harm. Examples of beneficence include protecting and

defending the rights of others, preventing harm from occurring to others, removing conditions that will cause harm to others, helping persons with disabilities, and rescuing persons in danger (Beauchamp & Childress, 2013).

Related Standards of Conduct

Occupational therapy personnel shall

- A. Provide appropriate evaluation and a plan of intervention for recipients of occupational therapy services specific to their needs.
- B. Reevaluate and reassess recipients of service in a timely manner to determine whether goals are being achieved and whether intervention plans should be revised.
- C. Use, to the extent possible, evaluation, planning, intervention techniques, assessments, and therapeutic equipment that are evidence based, current, and within the recognized scope of occupational therapy practice.
- D. Ensure that all duties delegated to other occupational therapy personnel are congruent with credentials, qualifications, experience, competency, and scope of practice with respect to service delivery, supervision, fieldwork education, and research.
- E. Provide occupational therapy services, including education and training, that are within each practitioner's level of competence and scope of practice.
- F. Take steps (e.g., continuing education, research, supervision, training) to ensure proficiency, use careful judgment, and weigh potential for harm when generally recognized standards do not exist in emerging technology or areas of practice.
- G. Maintain competency by ongoing participation in education relevant to one's practice area.
- H. Terminate occupational therapy services in collaboration with the service recipient or responsible party when the services are no longer beneficial.
- I. Refer to other providers when indicated by the needs of the client.
- J. Conduct and disseminate research in accordance with currently accepted ethical guidelines and standards for the protection of research participants, including determination of potential risks and benefits.

Nonmaleficence

Principle 2. Occupational therapy personnel shall refrain from actions that cause harm.

Nonmaleficence “obligates us to abstain from causing harm to others” (Beauchamp & Childress, 2013, p. 150). The Principle of *Nonmaleficence* also includes an obligation to not impose risks of harm even if the potential risk is without malicious or harmful intent. This Principle often is examined under the context of due care. The standard of *due care* “requires

that the goals pursued justify the risks that must be imposed to achieve those goals” (Beauchamp & Childress, 2013, p. 154). For example, in occupational therapy practice, this standard applies to situations in which the client might feel pain from a treatment intervention; however, the acute pain is justified by potential longitudinal, evidence-based benefits of the treatment.

Related Standards of Conduct

Occupational therapy personnel shall

- A. Avoid inflicting harm or injury to recipients of occupational therapy services, students, research participants, or employees.
- B. Avoid abandoning the service recipient by facilitating appropriate transitions when unable to provide services for any reason.
- C. Recognize and take appropriate action to remedy personal problems and limitations that might cause harm to recipients of service, colleagues, students, research participants, or others.
- D. Avoid any undue influences that may impair practice and compromise the ability to safely and competently provide occupational therapy services, education, or research.
- E. Address impaired practice and when necessary report to the appropriate authorities.
- F. Avoid dual relationships, conflicts of interest, and situations in which a practitioner, educator, student, researcher, or employer is unable to maintain clear professional boundaries or objectivity.
- G. Avoid engaging in sexual activity with a recipient of service, including the client’s family or significant other, student, research participant, or employee, while a professional relationship exists.
- H. Avoid compromising rights or well-being of others based on arbitrary directives (e.g., unrealistic productivity expectations, falsification of documentation, inaccurate coding) by exercising professional judgment and critical analysis.
- I. Avoid exploiting any relationship established as an occupational therapy clinician, educator, or researcher to further one’s own physical, emotional, financial, political, or business interests at the expense of recipients of services, students, research participants, employees, or colleagues.
- J. Avoid bartering for services when there is the potential for exploitation and conflict of interest.

Autonomy

Principle 3. Occupational therapy personnel shall respect the right of the individual to self-determination, privacy, confidentiality, and consent.

The Principle of *Autonomy* expresses the concept that practitioners have a duty to treat the client according to the client’s desires, within the bounds of accepted standards of care, and to

protect the client's confidential information. Often, respect for Autonomy is referred to as the *self-determination principle*. However, respecting a person's autonomy goes beyond acknowledging an individual as a mere agent and also acknowledges a person's right "to hold views, to make choices, and to take actions based on [his or her] values and beliefs" (Beauchamp & Childress, 2013, p. 106). Individuals have the right to make a determination regarding care decisions that directly affect their lives. In the event that a person lacks decision-making capacity, his or her autonomy should be respected through involvement of an authorized agent or surrogate decision maker.

Related Standards of Conduct

Occupational therapy personnel shall

- A. Respect and honor the expressed wishes of recipients of service.
- B. Fully disclose the benefits, risks, and potential outcomes of any intervention; the personnel who will be providing the intervention; and any reasonable alternatives to the proposed intervention.
- C. Obtain consent after disclosing appropriate information and answering any questions posed by the recipient of service or research participant to ensure voluntariness.
- D. Establish a collaborative relationship with recipients of service and relevant stakeholders, to promote shared decision making.
- E. Respect the client's right to refuse occupational therapy services temporarily or permanently, even when that refusal has potential to result in poor outcomes.
- F. Refrain from threatening, coercing, or deceiving clients to promote compliance with occupational therapy recommendations.
- G. Respect a research participant's right to withdraw from a research study without penalty.
- H. Maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communications, in compliance with applicable laws, including all aspects of privacy laws and exceptions thereto (e.g., Health Insurance Portability and Accountability Act, Family Educational Rights and Privacy Act).
- I. Display responsible conduct and discretion when engaging in social networking, including but not limited to refraining from posting protected health information.
- J. Facilitate comprehension and address barriers to communication (e.g., aphasia; differences in language, literacy, culture) with the recipient of service (or responsible party), student, or research participant.

Justice

Principle 4. Occupational therapy personnel shall promote fairness and objectivity in the provision of occupational therapy services.

The Principle of *Justice* relates to the fair, equitable, and appropriate treatment of persons (Beauchamp & Childress, 2013). Occupational therapy personnel should relate in a respectful, fair, and impartial manner to individuals and groups with whom they interact. They should also respect the applicable laws and standards related to their area of practice. Justice requires the impartial consideration and consistent following of rules to generate unbiased decisions and promote fairness. As occupational therapy personnel, we work to uphold a society in which all individuals have an equitable opportunity to achieve occupational engagement as an essential component of their life.

Related Standards of Conduct

Occupational therapy personnel shall

- A. Respond to requests for occupational therapy services (e.g., a referral) in a timely manner as determined by law, regulation, or policy.
- B. Assist those in need of occupational therapy services to secure access through available means.
- C. Address barriers in access to occupational therapy services by offering or referring clients to financial aid, charity care, or pro bono services within the parameters of organizational policies.
- D. Advocate for changes to systems and policies that are discriminatory or unfairly limit or prevent access to occupational therapy services.
- E. Maintain awareness of current laws and AOTA policies and Official Documents that apply to the profession of occupational therapy.
- F. Inform employers, employees, colleagues, students, and researchers of applicable policies, laws, and Official Documents.
- G. Hold requisite credentials for the occupational therapy services they provide in academic, research, physical, or virtual work settings.
- H. Provide appropriate supervision in accordance with AOTA Official Documents and relevant laws, regulations, policies, procedures, standards, and guidelines.
- I. Obtain all necessary approvals prior to initiating research activities.
- J. Refrain from accepting gifts that would unduly influence the therapeutic relationship or have the potential to blur professional boundaries, and adhere to employer policies when offered gifts.
- K. Report to appropriate authorities any acts in practice, education, and research that are unethical or illegal.
- L. Collaborate with employers to formulate policies and procedures in compliance with legal, regulatory, and ethical standards and work to resolve any conflicts or inconsistencies.
- M. Bill and collect fees legally and justly in a manner that is fair, reasonable, and commensurate with services delivered.

- N. Ensure compliance with relevant laws and promote transparency when participating in a business arrangement as owner, stockholder, partner, or employee.
- O. Ensure that documentation for reimbursement purposes is done in accordance with applicable laws, guidelines, and regulations.
- P. Refrain from participating in any action resulting in unauthorized access to educational content or exams (including but not limited to sharing test questions, unauthorized use of or access to content or codes, or selling access or authorization codes).

Veracity

Principle 5. Occupational therapy personnel shall provide comprehensive, accurate, and objective information when representing the profession.

Veracity is based on the virtues of truthfulness, candor, and honesty. The Principle of *Veracity* refers to comprehensive, accurate, and objective transmission of information and includes fostering understanding of such information (Beauchamp & Childress, 2013). Veracity is based on respect owed to others, including but not limited to recipients of service, colleagues, students, researchers, and research participants.

In communicating with others, occupational therapy personnel implicitly promise to be truthful and not deceptive. When entering into a therapeutic or research relationship, the recipient of service or research participant has a right to accurate information. In addition, transmission of information is incomplete without also ensuring that the recipient or participant understands the information provided.

Concepts of veracity must be carefully balanced with other potentially competing ethical principles, cultural beliefs, and organizational policies. Veracity ultimately is valued as a means to establish trust and strengthen professional relationships. Therefore, adherence to the Principle of Veracity also requires thoughtful analysis of how full disclosure of information may affect outcomes.

Related Standards of Conduct

Occupational therapy personnel shall

- A. Represent credentials, qualifications, education, experience, training, roles, duties, competence, contributions, and findings accurately in all forms of communication.
- B. Refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, misleading, or unfair statements or claims.
- C. Record and report in an accurate and timely manner and in accordance with applicable regulations all information related to professional or academic documentation and activities.
- D. Identify and fully disclose to all appropriate persons errors or adverse events that compromise the safety of service recipients.

- E. Ensure that all marketing and advertising are truthful, accurate, and carefully presented to avoid misleading recipients of service, research participants, or the public.
- F. Describe the type and duration of occupational therapy services accurately in professional contracts, including the duties and responsibilities of all involved parties.
- G. Be honest, fair, accurate, respectful, and timely in gathering and reporting fact-based information regarding employee job performance and student performance.
- H. Give credit and recognition when using the ideas and work of others in written, oral, or electronic media (i.e., do not plagiarize).
- I. Provide students with access to accurate information regarding educational requirements and academic policies and procedures relative to the occupational therapy program or educational institution.
- J. Maintain privacy and truthfulness when utilizing telecommunication in delivery of occupational therapy services.

Fidelity

Principle 6. Occupational therapy personnel shall treat clients, colleagues, and other professionals with respect, fairness, discretion, and integrity.

The Principle of *Fidelity* comes from the Latin root *fidelis*, meaning loyal. *Fidelity* refers to the duty one has to keep a commitment once it is made (Veatch, Haddad, & English, 2010). In the health professions, this commitment refers to promises made between a provider and a client or patient based on an expectation of loyalty, staying with the patient in a time of need, and compliance with a code of ethics. These promises can be implied or explicit. The duty to disclose information that is potentially meaningful in making decisions is one obligation of the moral contract between provider and client or patient (Veatch et al., 2010).

Whereas respecting Fidelity requires occupational therapy personnel to meet the client's reasonable expectations, the Principle also addresses maintaining respectful collegial and organizational relationships (Purtilo & Doherty, 2011). Professional relationships are greatly influenced by the complexity of the environment in which occupational therapy personnel work. Practitioners, educators, and researchers alike must consistently balance their duties to service recipients, students, research participants, and other professionals as well as to organizations that may influence decision making and professional practice.

Related Standards of Conduct

Occupational therapy personnel shall

- A. Preserve, respect, and safeguard private information about employees, colleagues, and students unless otherwise mandated or permitted by relevant laws.
- B. Address incompetent, disruptive, unethical, illegal, or impaired practice that jeopardizes the safety or well-being of others and team effectiveness.

- C. Avoid conflicts of interest or conflicts of commitment in employment, volunteer roles, or research.
- D. Avoid using one's position (employee or volunteer) or knowledge gained from that position in such a manner as to give rise to real or perceived conflict of interest among the person, the employer, other AOTA members, or other organizations.
- E. Be diligent stewards of human, financial, and material resources of their employers, and refrain from exploiting these resources for personal gain.
- F. Refrain from verbal, physical, emotional, or sexual harassment of peers or colleagues.
- G. Refrain from communication that is derogatory, intimidating, or disrespectful and that unduly discourages others from participating in professional dialogue.
- H. Promote collaborative actions and communication as a member of interprofessional teams to facilitate quality care and safety for clients.
- I. Respect the practices, competencies, roles, and responsibilities of their own and other professions to promote a collaborative environment reflective of interprofessional teams.
- J. Use conflict resolution and internal and alternative dispute resolution resources as needed to resolve organizational and interpersonal conflicts, as well as perceived institutional ethics violations.
- K. Abide by policies, procedures, and protocols when serving or acting on behalf of a professional organization or employer to fully and accurately represent the organization's official and authorized positions.
- L. Refrain from actions that reduce the public's trust in occupational therapy.
- M. Self-identify when personal, cultural, or religious values preclude, or are anticipated to negatively affect, the professional relationship or provision of services, while adhering to organizational policies when requesting an exemption from service to an individual or group on the basis of conflict of conscience.

Source Note: The provisions of this §374.4 adopted to be effective December 2, 2013, 38 TexReg 8683; amended to be effective April 1, 2016, 41 TexReg 1973

§374.5. Licensure of Persons with Criminal Convictions.

(a) The Board may revoke or suspend an existing valid license or disqualify a person from receiving or renewing a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the practice of occupational therapy. Those crimes that the Board considers to be directly related to the duties and responsibilities of an occupational therapist or an occupational therapy assistant shall include, but are not limited to:

- (1) any felony that involves an act of fraud, dishonesty, or deceit;
- (2) any criminal violation of the Occupational Therapy Practice Act or other statutes regulating or pertaining to occupational therapy or the medical profession;
- (3) any crime involving moral turpitude ("moral turpitude" in this section refers to baseness, vileness, or dishonesty of a high degree);

- (4) murder;
- (5) assault;
- (6) burglary;
- (7) robbery;
- (8) theft;
- (9) rape or sexual abuse;
- (10) patient/client abuse;
- (11) injury to a child, elderly individual, or an individual with a disability;
- (12) child molestation, abuse, endangerment, or neglect;
- (13) felony conviction for driving while intoxicated, driving under the influence of alcohol or drugs, or driving while ability is impaired;
- (14) sale, distribution, or illegal possession of narcotics, controlled substances, or dangerous drugs;
- (15) tampering with a governmental record;
- (16) offenses that include attempting or conspiring to commit any of the offenses in this subsection.

(b) In determining whether a crime not listed previously relates to occupational therapy, the Board will consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to practice occupational therapy;
- (3) the extent to which a license might offer opportunities to engage in further criminal activity of the same type as that in which the person was previously engaged; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and to discharge the responsibilities of an occupational therapist or occupational therapy assistant.

(c) In review of a complaint alleging that the respondent/applicant has been convicted of a crime that directly relates to the duties and responsibilities of an occupational therapist or occupational therapy assistant, the Board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice occupational therapy:

- (1) the extent and nature of the person's past criminal activity;

- (2) the age of the person at the time of commission of the crime;
 - (3) conduct and work activity of the person prior to and after criminal activity;
 - (4) evidence of rehabilitation while incarcerated or following release;
 - (5) notarized letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; letters from the sheriff or chief of police where the person resides; and other persons having contact with the convicted person; and
 - (6) records of steady employment, provision for dependents, payment of all court costs, supervision fees, fines, and restitution if ordered as a result of the person's conviction.
- (d) The burden and expense of providing and presenting the foregoing documentation to the Board shall be solely that of the respondent/applicant.

Source Note: The provisions of this §374.5 adopted to be effective March 1, 2017 42 TexReg 698.

CHAPTER 375 FEES

§375.1. Fees.

(a) Fees are prescribed by the Executive Council and may be subject to change by legislative mandate, refer to 22 TAC §651.1 and §651.3 of the Executive Council Rules. The fees are required to be paid before a license or a renewal is issued. The application fee will be submitted with the application and is non-refundable.

(b) A cashier's check, certified check, or money order must accompany all future payments to the board after an insufficient funds check has been processed by the board.

(c) An applicant for a license shall pay the application fee plus the appropriate license fee.

(d) The board will not refund any application fee or license fee to an applicant who is denied a license. Applicants requesting that the board cease the license application process shall forfeit all fees paid. Such requests must be received by the board in writing.

(e) There shall be no refunds issued to individuals who have had their licenses suspended or revoked.

(f) Licensees who have had their licenses suspended for failure to pay child support shall pay all applicable fees before licenses will be reissued.

Source Note: The provisions of this §375.1 adopted to be effective October 11, 1994, 19 TexReg 7719; amended to be effective May 8, 1996, 21 TexReg 3718; amended to be effective August 24, 2008, 33 TexReg 6605.

EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS**TITLE 22 EXAMINING BOARDS PART 28****CHAPTER 651 FEES****§651.1. Occupational Therapy Board Fees.****(a) Application Regular License.**

- (1) Occupational Therapist--\$140.
- (2) Occupational Therapy Assistant--\$100.
- (3) Application to retake the exam, OT--\$25.
- (4) Application to retake the exam, OTA--\$25.

(b) Temporary License.

- (1) Occupational Therapist--\$70.
- (2) Occupational Therapy Assistant--\$55.

(c) Provisional License.

- (1) Occupational Therapist--\$80.
- (2) Occupational Therapy Assistant--\$75.

(d) Active to Inactive Status.

- (1) Occupational Therapist--a fee to equal one-half the renewal fee.
- (2) Occupational Therapy Assistant--a fee to equal one-half the renewal fee.

(e) Inactive Status to Active Status.

- (1) Occupational Therapist--a fee equal to the renewal fee.
- (2) Occupational Therapy Assistant--a fee equal to the renewal fee.

(f) Renewal.

- (1) Active.
 - (A) Occupational Therapist--\$248.
 - (B) Occupational Therapy Assistant--\$184.
- (2) Inactive.

(A) Occupational Therapist--a fee equal to one-half the renewal fee.

(B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee.

(g) Retired Status.

(1) Application--\$25.

(2) Renewal--\$25.

(h) Late Fees Renewal (all licensees).

(1) Late 90 days or less--the renewal fee plus late fee which is equal to one-half of the renewal fee.

(2) Late more than 90 days but less than one year--the renewal fee plus late fee which is equal to the renewal fee.

(i) License Restoration Fee for all licensees--a fee equal to the renewal fee.

Source Note: The provisions of this §651.1 adopted to be effective August 18, 1995, 20 TexReg 5864; amended to be effective May 22, 1996, 21 TexReg 4225; amended to be effective August 16, 1996, 21 TexReg 7381; amended to be effective December 17, 2000, 25 TexReg 12394; amended to be effective September 1, 2001, 26 TexReg 3747; amended to be effective March 4, 2002, 27 TexReg 1496; amended to be effective June 2, 2002, 27 TexReg 4571; amended to be effective January 1, 2004, 28 TexReg 11095; amended to be effective December 2, 2004, 29 TexReg 11035; amended to be effective September 1, 2005, 30 TexReg 4834; amended to be effective October 12, 2006, 31 TexReg 8369; amended to be effective January 1, 2010, 34 TexReg 9212; amended to be effective January 1, 2011, 35 TexReg 11258; amended to be effective February 14, 2013, 38 TexReg 644; amended to be effective January 1, 2016, 40 TexReg 8792; amended to be effective September 1, 2019, 44 TexReg 4481.

§651.3. Administrative Services Fees.

(a) Verification/Transfer of Licensure--\$50.

(b) Duplicate/Replacement License--\$30.

(c) Reinstatement of Suspended or Revoked License--\$50.

(d) Insufficient Funds Check Fee--\$25.

(e) ACH Return Fee--\$25.

(f) Preliminary Criminal History Evaluation Letter--\$50.

Source Note: The provisions of this §651.3 adopted to be effective August 16, 1996, 21 TexReg 7381; amended to be effective January 1, 2004, 28 TexReg 11095; amended to be effective September 1, 2005, 30 TexReg 4835; amended to be effective January 1, 2010, 34 TexReg 9212; amended to be effective February 14, 2013, 38 TexReg 644; amended to be effective September 1, 2019, 44 TexReg 4481.